IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

KEVIN C. RANDALL,	:	APPEAL NO. C-070376 TRIAL NO. DR-0400504
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
LAURA S. RANDALL,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Defendant-appellant Laura Randall's marriage to plaintiff-appellee Kevin Randall ended with a decree of dissolution on April 27, 2004. The decree incorporated by reference the parties' separation agreement. At that time, the parties provided for shared parenting and incorporated in the decree a shared-parenting plan for their two daughters.

The separation agreement specifically referred to the shared-parenting plan. In paragraph 4 of the separation agreement, Kevin and Laura "agree[d] that based on the allocation of parenting time between the parties, the obligations incurred by both parties relating to the minor children, the relative incomes of the parties and the terms of Section 5 hereinafter, there w[ould] be no child support paid by either party

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[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

to the other at the present time." They further "agree[d] that based on the terms of the parenting plan and the terms of Section 5 hereinafter, neither [party would] seek to receive child support for the minor children from the other, unless spousal support [wa]s terminated pursuant to Section 5 hereinafter or otherwise modified."

Under the shared-parenting plan, Kevin and Laura were to share the children on an equal basis. The plan also provided for no exchange of child support. Instead, the plan referred to Kevin's obligation to pay to Laura family maintenance (spousal support) of $108,000 per year plus one-third of his annual bonus. They also agreed to share expenses for "private school tuition and fees, wardrobe, extracurricular activities and automobile expenses." The shared-parenting plan further provided that "[a]ll other regularly occurring day to day expenses associated with either child shall be borne by the parent who is currently exercising parenting time with the children at the time the expense is incurred."

Shortly after the decree of dissolution was finalized, both parties moved to modify the shared-parenting plan. Kevin ultimately moved to terminate the shared-parenting plan and to have Laura named as the residential parent and legal custodian. Laura moved to modify child support. After four days of hearings, the magistrate issued a decision terminating shared parenting, designating Laura as the residential parent and legal custodian, setting a visitation schedule for Kevin, setting a monthly child-support order, and modifying the expense-sharing provisions between the parties. Both parties filed timely objections to the magistrate's decision.

The trial court overruled some of the parties' objections, sustained some of the objections, and mooted some of the objections based upon its decision to sustain Kevin's objection to the order of statutory child support. The trial court, relying

upon this court's decision in *Taylor v. Taylor*,[2] held that, under the terms of the parties' agreement, the magistrate had erred in calculating and setting an order of child support absent a modification or termination of the spousal-support award in their agreement. Laura now appeals, raising three assignments of error for our review.

In her first assignment of error, Laura argues that the trial court erred when it relied upon this court's decision in *Taylor* to determine that it could not order an exchange of monthly child support without terminating or modifying spousal support. In her second assignment of error, Laura argues that the trial court's modification of the expense-sharing provisions was inconsistent with its prior reasoning that it could not award an exchange of child support absent a modification or termination of spousal support. We agree.

In *Taylor*, this court upheld an express agreement between the parties not to seek statutory child support from one another where the needs of the children were adequately provided for through other means, and where the agreement did not violate public policy or obviate future support. *Taylor*, however, is not only factually distinguishable, but is also inapplicable to the facts before us.

Here, the parties expressly agreed in section 4 of the separation agreement, which was incorporated into their divorce decree, that they would not seek a statutory exchange of child support based upon four separate contingencies at the time of their agreement: (1) their equal allocation of parenting time; (2) the obligations incurred by each parent for the benefit of the children when the children were in each parent's care during their parenting times; (3) the relative incomes of

[2] (July 16, 1999), 1st Dist. No. C-980430.

the parties; and (4) the terms of the shared parenting plan, which reiterated these same contingencies. When the trial court terminated the shared-parenting plan, reallocated the parenting time, and awarded full custody of the children to Laura, thereby affecting the expenses incurred by the parties during their respective parenting times, the fundamental structure underlying the parties' agreement no longer existed. There was also evidence before the court that the relative incomes of the parties had changed. The court, furthermore, modified the expense-sharing provisions between the parties.

Because the parties' agreement specifically provided that their decision not to seek an exchange of child support was dependent upon certain conditions, and because these conditions were no longer present, the trial court erred in holding that it could not calculate and set an order of child support absent a modification or termination of the spousal-support award. As a result, we sustain Laura's first and second assignments of error. Given our disposition of Laura's first and second assignments of error, we need not reach the parties' arguments regarding a change in circumstances or whether a modification or termination of spousal support would have been appropriate.

In her third assignment of error, Laura argues that the trial court erred in terminating the shared-parenting plan. Laura failed, however, to object below to that portion of the magistrate's decision that terminated shared parenting. Consequently, she has waived all but plain error on appeal.[3] We hold that Laura's failure to object

[3] Civ.R. 53(D)(3)(b)(iv); see, also, *Yantek v. Coach Builders Ltd.*, 1st Dist. No. C-060601, 2007-Ohio-5126, at ¶7 and fn. 9; *Nemeth v. Nemeth*, 11th Dist. No. 2007-G-2791, 2008-Ohio-3263, at ¶18-22; *Teaberry v. Teaberry*, 7th Dist. No. 07MA168, 2008-Ohio-3334, at ¶32-35.

to the magistrate's decision does not warrant a claim of plain error on the state of this record.[4] As a result, we overrule her third assignment of error.

Having found merit in Laura's first and second assignments of error, we reverse that part of the trial court's holding that it was without authority to order an exchange of monthly child support and remand this case for further proceedings consistent with this judgment entry and the law. The balance of the judgment is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HILDEBRANDT and **CUNNINGHAM, JJ.**

To the Clerk:

Enter upon the Journal of the Court on August 6, 2008

per order of the Court _____.
Presiding Judge

[4] *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 1997-Ohio-401, 679 N.E.2d 1099.